

III. OPEN SPACE SUBVENTION ACT PAYMENTS

Open Space Subvention Act

The Open Space Subvention Act provides for the partial replacement of local property tax revenues foregone as a result of participation in the Williamson Act and other enforceable restriction programs.

Since the first Open Space Subvention payments made in fiscal year 1972-73, the State has distributed over \$762 million to counties and cities in support of the Williamson Act program. The \$39,307,760 claimed in subventions and the 16,104,339 acres reported as eligible for subvention payment in 2004 represent increases over 2003. However, these figures declined in 2005 to \$38,808,296 and 15,926,181 acres. Actual subvention payments, which had been increasing since 1996, declined in 2004 and 2005.

While prime farmlands constitute about one-third of statewide enrollment, they accounted for roughly 73 percent of total subvention claims in 2005. Other enforceably restricted lands, including Open Space Easement lands that qualify for subvention payments, accounted for 0.1 percent of total subventions in 2005.

Not all Williamson Act contracted land is eligible for subvention payment. For example, local governments generally cannot claim subventions on contracted land that is under nonrenewal or valued for property tax purposes at Proposition 13 levels. In 2004-05, approximately 3-4 percent of the statewide enrollment was not eligible for subvention payment.

The Top 10 counties in terms of subvention entitlement remain fairly stable over the years. The eight San Joaquin Valley counties ranked No. 1 through No. 8 in 2004-05 as they did in 2003-04. The San Joaquin Valley contains about 44 percent of the total statewide Williamson Act enrollment and accounts for 59 percent of total subventions.

Cross-Reference: Appendix C (p. 48, 49)

Top 10 Counties with the Largest Subvention Entitlement

2004				2005			
Ranking		County	Acres	Ranking		County	Dollars
2003	2004			2004	2005		
1	1	Fresno	5,670,218	1	1	Fresno	5,611,941
2	2	Kern	4,823,882	2	2	Kern	4,803,179
3	3	Tulare	3,528,215	3	3	Tulare	3,522,019
4	4	Kings	2,877,367	4	4	Kings	2,673,518
5	5	San Joaquin	1,970,534	5	5	San Joaquin	1,942,034
6	6	Stanislaus	1,670,086	6	6	Stanislaus	1,609,009
8	7	Madera	1,505,483	8	7	Merced	1,412,597
9	8	Merced	1,404,241	7	8	Madera	1,383,174
7	9	Yolo	1,324,809	9	9	Yolo	1,319,389
10	10	San Luis Obispo	1,117,819	10	10	San Luis Obispo	1,099,327

Open Space Subvention Act Payment Claims By Region (Dollars)*

Region	Land Conservation Act		Farmland Security Zone				Agricultural Conservation Easement		Other Eligible Open Space	Total
			Urban		Non-Urban		Prime	Nonprime		
	Prime	Nonprime	Prime	Nonprime	Prime	Nonprime	Prime	Nonprime		
Bay & Central Coast	1,165,323	2,740,697	101,170	14,473	57,694	22,185	0	0	2,338	4,103,879
Foothill & Sierra	281,619	672,159	0	6,186	5,825	7,843	0	0	2,287	975,919
North Coast & Mountain	900,264	1,551,751	4,364	272	59,199	7,137	0	0	0	2,522,987
Sacramento Valley	3,761,175	1,679,779	255,149	26,948	567,657	9,504	633	4	0	6,300,851
San Joaquin Valley	16,916,220	2,971,594	723,643	5,342	2,312,741	25,607	1,639	0	686	22,957,471
South Coast & Desert	1,305,317	579,846	12,220	5,171	2,851	244	1,275	214	40,052	1,947,190
Totals	24,329,917	10,195,826	1,096,546	58,391	3,005,968	72,521	3,547	218	45,362	38,808,296

*Year 2005. Actual payment totals may differ slightly due to audit adjustments and/or enforcement actions

IV. COMPLIANCE AUDITS

In 1988, Williamson Act and Open Space Subvention Act program audits were initiated for participating Williamson Act counties and cities. At that time, the Department of Conservation contracted with the Department of General Services to conduct audits of several counties. As a result of those initial audits, approximately \$550,000 in subventions was recaptured for payments made on land not eligible for subventions and for cancellation fees paid to counties but not forwarded to the State. In fiscal year 1996-97, the Department began an annual Williamson Act/Open Space Subvention Act compliance audit program through contracts with the Department of Finance. From fiscal year 1996-97 to 2002-03, the State has invested nearly \$503,000 to conduct the annual audits. This investment has resulted in a return to the General Fund of more than \$1.9 million from the recapture of subvention overpayments and unpaid contract cancellation fees.

Claiming subvention on land not eligible for payment is the most frequent cause of subvention overpayments. This includes land starting through the contract nonrenewal process, and land valued lower under Proposition 13 valuation for regular Williamson Act contracts. Another problem area is when cancellation fees are collected by local governments and not transmitted within the statutorily required timeframe to the State Controller's Office.

Besides the subventions recovered by the audits, a major benefit is the correction of procedures for cities and counties that may not have followed the Williamson Act requirements and restrictions. The audit findings provide reassurance to both local governments and the State that the provisions of statute are being followed. Since 1972, over \$762 million in State subventions have been certified to local governments to provide replacement revenues for the loss in tax revenue and administrative costs resulting from participation in the Williamson Act program. The audit program provides a valuable check to ensure that the program is administered according to statute at the local level, and to carry out the State's fiduciary responsibility for a major investment by the taxpayers of California.

- **Fiscal year 1996-97** audits of Kern, San Joaquin and Tulare Counties recaptured \$65,087 in subvention overpayments. The audit also discovered a contract violation that led to the Department's initiation of legal action to remedy the violation. The resolution of the contract enforcement action resulted in a payment of \$100,000 to the California Farmland Conservancy Program Fund, and the money was subsequently used to fund acquisition of perpetual agricultural conservation easements.
- **Fiscal year 1997-98** audits of Fresno, Kings, Stanislaus and Madera Counties resulted in the recapture of \$165,607 in subvention overpayments.
- **Fiscal year 1998-99** audits of San Luis Obispo, Riverside, Monterey and Tehama Counties resulted in the recapture of \$958,497 in subvention overpayments. Of this amount, \$911,298 was for cancellation fees collected by Riverside County but not forwarded to the State Controller's Office.
- **Fiscal year 1999-00** audits of Colusa, San Diego and Yolo Counties resulted in the recapture of \$150,406 in subvention overpayments.
- **Fiscal year 2000-01** audits of Contra Costa, Glenn, San Benito, Santa Barbara and Tuolumne Counties resulted in the recapture of \$5,000 in overpaid subventions.
- **Fiscal year 2001-02** audits of Marin, Mendocino, Placer, San Bernardino and Santa Clara Counties resulted in the recapture of \$57,980 in subvention overpayments. The audits also generated a subsequent review that resulted in the recapture of \$407,885 in subvention overpayments beginning in fiscal year 2004-05.
- **Fiscal year 2002-03** audits of Sacramento, Ventura, Solano, Kern, Mariposa and Siskiyou Counties resulted in the recapture of \$11,125 in subvention overpayments.

APPENDIX A. SIGNIFICANT LEGISLATION

Summary of Significant Legislation Effective January 1, 2004

Assembly Bill 1492 (Laird, Chapter 694, Statutes of 2003)

- AB 1492 added Section 51250 to the Government Code. Section 51250 provides an additional and alternate remedy to the contract cancellation petition (§51281-et. seq.) for a material breach of contract. Additionally, AB 1492 amends Section 51257 by extending the Williamson Act lot line adjustment provisions to January 1, 2009.
- Section 51250(b) defines a material breach on land subject to a Williamson Act contract as a commercial, industrial or residential building(s), exceeding 2,500 square feet that is not permissible under the Williamson Act or contract, local uniform rules or ordinances. AB 1492 only applies to structure(s) that have been permitted and constructed after January 1, 2004.
- If upon evidence presented at a public hearing the city/county determines a breach of contract has occurred, the city/county shall either order the landowner to eliminate the breach condition within 60 days or assess a monetary penalty. The monetary penalty shall be 25% of the unrestricted fair market value of the land rendered incompatible by the breach, plus 25% of the value of the incompatible building and any related improvements on the contracted land.
- While it is the County's responsibility to enforce the sanctions contained in Section 51250, the Department is also empowered to take actions against breaches of contract.

Summary of Significant Legislation Effective January 1, 2005

Senate Bill 1820 (Machado, Chapter 794, Statutes of 2004)

- Assessors determine the current fair market valuation of land to determine the cancellation fee required to remove land from a Williamson Act contract. Existing law allowed a petitioner the right to appeal the current fair market valuation of the cancellation fee to the county board of equalization.
- SB 1820 deletes the petitioner's right to appeal and requires the assessor to notify the petitioner and the Department of the current fair market valuation of land to be removed from contract. If either the petitioner or the Department believes the valuation to be inaccurate, either party may request the assessor to conduct a formal review of the current fair market valuation. SB 1820 also sets forth procedures for formal review and any re-computation of the cancellation fee.

APPENDIX B. ABOUT THE WILLIAMSON ACT

The California Land Conservation Act, better known as the Williamson Act, has been the state's premier agricultural land protection program since its enactment in 1965. Over 16 million of the state's 30 million acres of farm and ranch land are currently protected under the Williamson Act. The Williamson Act statute is located in the California Government Code beginning with Section 51200.

Following World War II, California experienced tremendous population and economic growth. This growth, in tandem with the State's property tax system, led to increased pressures to convert agricultural land to urban use. Rapidly escalating property taxes often presented a prohibitive burden for farmers who wanted to maintain their agricultural operations. In response, the California Legislature passed the Williamson Act in 1965 to preserve agricultural and open space lands by discouraging premature and unnecessary conversion to urban uses. The Williamson Act was then, and remains today, a highly innovative policy that tackles the problem of agricultural land protection through an interrelated set of property tax, land use, and conservation measures.

Fundamentally, the Williamson Act is a State policy administered by local governments. Local governments are not mandated to administer the Act, but those that do have some latitude to tailor the program to suit local goals and objectives. The State's support of the program is strong and enduring – expressed in the language of the Act, in the authority granted to local governments, in the State subventions, and in the recent enhancements to the Act that further promote farmland and open space protection.

A three-way relationship between private landowners, local governments, and the State is central to the Williamson Act. Local governments and landowners voluntarily enter into a contract in which each accepts certain costs in return for other benefits. The landowner forgoes the possibility of development, or converting his or her property into nonagricultural or non-open space use during the term of the contract, in return for lower property taxes. The local government foregoes a portion of its property taxes in return for the planning advantages and values implicit in retaining land in agriculture or open space. The State is also a key player in the program. The State supports local governments and landowners in the form of technical and implementation assistance, interpretation of the Act, subventions to local governments, research of issues and policies, contract enforcement, and preparation of the Williamson Act Status Report.

Williamson Act contracts have an initial term of ten years, with renewal occurring automatically each year (Local governments can establish initial contract terms for longer periods of time). The contracts run with the land and are binding on all successors in interest of the landowner. Only land located within an agricultural preserve is eligible for a Williamson Act contract. An agricultural preserve defines the boundary of an area within which a city or county will enter into contracts with landowners. The boundary is designated by resolution of the board of supervisors (board) or city council (council) having jurisdiction. Preserves are regulated by rules and restrictions designated in the resolution to ensure that the land within the preserve is maintained for agricultural or open space use. The rules of each agricultural preserve specify the uses allowed. Generally, any commercial agricultural use will be permitted within any agricultural preserve. In addition, local governments may identify compatible uses permitted with a use permit. Landowners interested in enrolling land in a contract should contact their local planning department for application forms and instructions.

In August of 1998, Senate Bill 1182 established the Farmland Security Zone (FSZ) provisions of the Williamson Act. An FSZ is an area created within an agricultural preserve by a board upon request by a landowner or group of landowners. FSZ contracts offer landowners greater property tax reduction in return for an initial contract term of twenty years, with renewal occurring automatically each year. Land restricted by an FSZ contract is valued for property assessment purposes at 65 percent of its Williamson Act valuation, or 65 percent of its Proposition 13 valuation, whichever is lower. New special taxes for urban-related services must be levied at an unspecified reduced rate unless the tax directly benefits the land or living improvements. Cities and special districts that provide non-agricultural services are generally prohibited from annexing land enrolled under an FSZ contract. Similarly, school districts are prohibited from taking FSZ lands for school facilities. The FSZ provisions of the Williamson Act begin at Section 51296 of the California Government Code.